



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-0515]

RIN 1625-AA00

Safety Zone; Major Motion Picture Filming, Cape Fear River;
Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Cape Fear River near Wilmington, North Carolina. The safety zone is intended to restrict vessels from a portion of the Cape Fear River due to the filming of a movie involving high speed boat chases and other dangerous stunts on water. The temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with the stunts that will be performed on the river during the filming of this motion picture.

DATES: This rule is effective from August 2, 2012 through August 24, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2012-0515]. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail BOSN3 Joseph M. Edge, Coast Guard Sector North Carolina, Coast Guard; telephone 252-247-4525, e-mail Joseph.M.Edge@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

| | |
|------|---------------------------------|
| DHS | Department of Homeland Security |
| FR | Federal Register |
| NPRM | Notice of Proposed Rulemaking |

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest."

Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the final details for this event was not provided to the Coast Guard until May 30, 2012. As such, it is impracticable to provide a full comment period due to lack of time. In addition, given the high risks of injury and damage that will be created during the filming of the movie, a delay in enacting this safety zone would be contrary to public interest.

B. Basis and Purpose

The temporary safety zone is necessary to protect vessels from the hazards associated with the stunts that will be performed during the filming of a major motion picture. The filming will involve fast-paced, multi-vessel, highly choreographed stunts, with multiple water and air platforms interacting. The Captain of the Port, Sector North Carolina, has determined that the stunts associated with the filming of this motion picture do pose significant risks to public safety and property and that a safety zone is necessary.

C. Discussion of the Final Rule

The Coast Guard is establishing a temporary safety zone on the Cape Fear River at Wilmington, NC. This safety zone will be enforced at night, between 7:30 p.m. and 7:00 a.m. from August 2, 2012 until August 24, 2012 and encompasses all navigable waters from latitude 34°11'14" North, longitude 077°57'26" West to

latitude 34°12'42" North, 077°57'24" West. [DATUM: NAD 83]

While the enforcement periods are scheduled for approximately 12 hour blocks, filming and execution of the stunts will not take place continuously during those periods. There will be periods of set up, break down, preparation, et cetera. It is anticipated that actual filming will take place in 20 minute increments throughout the enforcement periods and that, in some cases, the filming may end prior to the 7 a.m. enforcement deadlines. All persons and vessels shall comply with the instructions of the Captain of the Port, Sector North Carolina, or his or her on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector North Carolina, or his or her on-scene representative. The Captain of the Port, Sector North Carolina, or his or her on-scene representative may be contacted via VHF-FM channel 16.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an

assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

Although this regulation will restrict access to the area, the effect of the rule will not be significant since this rule will only be enforced while unsafe conditions exist. The Coast Guard also expects that traffic will generally be very low based on the time of night that this closure will occur.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in this portion of the Cape Fear River from 7:30 p.m. to 7:00 a.m. between August 2, 2012 and August 24, 2012.

The safety zone will not have significant economic impact on a substantial number of small entities for the following reasons: This rule will only be enforced while unsafe conditions exist. Traffic will only be prohibited from passing through the zone

when actual filming is being conducted. Traffic will only be stopped for a short duration not to exceed twenty minutes during any one closure. In the event that the safety zone affects shipping, commercial vessels may request permission from the Captain of the Port, Sector North Carolina, or his or her on-scene representative to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or

complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private

sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of

power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of safety zones. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0515 to read as follows:

§ 165.T05-0515 Safety Zone; Major Motion Picture Filming, Cape Fear River, Wilmington, NC.

(a) Definitions. For the purposes of this section, Captain of the Port means the Commander, Sector North Carolina.

Representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on the behalf of the Captain of the Port.

(b) Location. The following area is a safety zone: This safety zone will encompass all waters on the Cape Fear River from latitude 34°11'14" North, longitude 077°57'26" West to latitude

34°12'42" North, longitude 077°57'24" West. All geographic coordinates are North American Datum 1983 (NAD 83).

(c) Regulations. (1) The general regulations contained in §165.23 of this part apply to the area described in paragraph (b) of this section.

(2) Persons or vessels requiring entry into or passage through any portion of the safety zone must first request authorization from the Captain of the Port, or a designated representative, unless the Captain of the Port previously announced via Marine Safety Radio Broadcast on VHF Marine Band Radio channel 22 (157.1 MHz) that this regulation will not be enforced in that portion of the safety zone. The Captain of the Port can be contacted at telephone number (910) 343-3882 or by radio on VHF Marine Band Radio, channels 13 and 16.

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(e) Enforcement period. This section will be enforced from 7:30 p.m. to 7 a.m. from August 2, 2012 until August 24, 2012 unless cancelled earlier by the Captain of the Port.

Dated: June 11, 2012.

A. POPIEL
Captain, U.S. Coast Guard
Captain of the Port North Carolina

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Date: 06/21/2012]